

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

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Refer Reply To:  
CC:PSI:B01  
PLR-140209-13  
Date:  
January 06, 2014

Legend

X =

B =

Trust =

Date 1 =

Date 2 =

Date 3 =

Year =

State =

Dear :

This responds to a letter dated September 9, 2013, submitted on behalf of X by X's authorized representative, requesting a ruling under section 1362(f) of the Internal Revenue Code ("Code").

FACTS

According to the information submitted, X was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2. B and Trust were the shareholders of X on Date 2. On Date 3, Trust transferred its shares in X to B.

On Date 2, Trust was intended to be a qualified subchapter S trust (QSST) however, B, the beneficiary of Trust, did not file a timely election to treat Trust as a QSST. Therefore, X's S corporation election was invalid. X represents that the failure to make a QSST election was discovered by X's tax advisor in Year.

X represents that Trust qualifies as a QSST under section 1361(d) from Date 2 to Date 3. X further represents that the circumstances resulting in the failure to file a QSST election for Trust was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

## LAW AND ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that for purposes of section 1361(b)(1)(B), a trust all of which is treated (under subpart E) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under section 1362(d)(2) will be treated as a trust described in section 1361(c)(2)(A)(i) and the QSST's beneficiary will be treated as the owner (for purposes of section 678(a)) of that portion of the QSST's S corporation stock to which the election under section 1361(d)(2) applies. Under section 1361(d)(2)(A), a beneficiary of a QSST may elect to have section 1361(d) apply. Under section 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1362(f) provides that if (1) an election under section 1362(a) by any corporation was not effective for the taxable year for which made (determined without

regard to section 1362(b)(2)) by reason of a failure to meet the requirements of section 1361(b); (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation; and (4) the corporation for which the election was made, and each person who was a shareholder in such corporation at any time during the period specified pursuant to section 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, such corporation shall be treated as an S corporation during the period specified by the Secretary.

## CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective on Date 2 because B failed to make a timely QSST election. We further conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of section 1362(f).

Pursuant to section 1362(f), X will be treated as an S corporation as of Date 2 and thereafter, provided that B files a QSST election for Trust with an effective date of Date 2 with the appropriate service center within 120 days from the date of this letter, and X's S corporation is not otherwise terminated under section 1362(d). A copy of this letter must be attached to the QSST election.

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately and non-separately computed items of X as provided in section 1366, make any adjustments to stock basis as provided in section 1367, and take into account distributions made by X as provided by section 1368.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or whether Trust was otherwise a valid QSST.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David R. Haglund

David R. Haglund  
Branch Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: